

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JEFF WENDT,	)	Case No. DISM-04-0051
	)	
Appellant,	)	FINDINGS OF FACT, CONCLUSIONS OF
	)	LAW AND ORDER OF THE BOARD
v.	)	
	)	
DEPARTMENT OF FISH AND WILDLIFE,	)	
	)	
Respondent.	)	

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**I. INTRODUCTION**

**1.1 Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; BUSSE NUTLEY, Vice Chair; and GERALD L. MORGEN, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on March 15, 2005.

**1.2 Appearances.** Appellant Jeff Wendt did not appear. Mitchel Sachs, Assistant Attorney General, represented Respondent Department of Fish and Wildlife.

**1.3 Nature of Appeal.** This is an appeal from a disciplinary sanction of immediate suspension followed by dismissal for neglect of duty, inefficiency, insubordination, gross misconduct and willful violation of agency policies. Respondent alleges Appellant allowed the use of illegal substances on his state-owned residence, created a negative environment, allowed his dog to run

unattended on his state owned residence, failed to follow supervisory directives and to follow established work hours and failed to adequately perform the duties of his position.

## **II. FINDINGS OF FACT**

2.1 Appellant Jeff Wendt was a permanent employee for Respondent Department of Fish and Wildlife. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on April 27, 2004.

2.2 Appellant was a Fish and Wildlife Officer. Appellant lived on hatchery grounds at the Lyons Ferry Complex. Due to problems in the past, the department warned Appellant not to allow drug use on state property. Appellant was reminded of the department's addressing the use of illegal drugs on state premises. Appellant's personnel file reflects a history of corrective action related to his negative behavior and repeatedly failing to follow directives, rules and regulations.

2.3 Lou Atkins, Assistant Director of the Fish Program, was Appellant's appointing authority when the discipline was imposed. On April 5, 2004, Mr. Atkins notified Appellant that he was immediately suspended, followed by dismissal, for neglect of duty, inefficiency, insubordination, gross misconduct and willful violation of agency policies. Mr. Atkins charged Appellant with allowing the use of illegal substances on his state-owned residence, creating a negative environment for other, allowing his dog to run unattended on his state owned residence, failing to follow supervisory directives, failing to follow established work hours, and failing to adequately perform the duties of his position.

1 2.4 Prior to terminating Appellant's employment, Mr. Atkins met with Appellant to discuss the  
2 allegations that Appellant allowed the use of drug activity during parties held at his state-owned  
3 residence, targeted other employees with harassing behavior, failed to control his dog by allowing  
4 him to roam unattended, brought non-agency employees to perform state work without prior  
5 approval, failed to follow his work schedule, took lengthy and unscheduled breaks, and failed to  
6 perform the duties of his position, including failing to feed the fish.

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8 2.5 During the meeting, Appellant admitted he condoned drug use on state property, but he  
9 refuted most of the allegations, indicating that others misunderstood him, contended he did not  
10 receive certain directives from his supervisor and asserted that others would support that he was a  
11 good employee. Based on Appellant's statements, Mr. Atkins did further investigation in order to  
12 corroborate the information from employee and to interview the employees Appellant indicated  
13 would support him. However, none of the employees supported the information Appellant  
14 provided.

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16 2.6 Mr. Atkins concluded that Appellant violated F&W Policy 1214, Conflict of Interest/Ethics,  
17 Policy M1217, Use of State Resources, and Policy M1801, Department-owned Residences. After  
18 weighing the charges against Appellant's personnel record, which included a long history of  
19 ongoing misconduct and a failure on Appellant's part to modify his behavior, Mr. Atkins concluded  
20 that Appellant failed to comply with the standards and expectations of his job and that the chronic  
21 nature of Appellant's misconduct warranted termination.

### 22 23 **III. CONCLUSIONS OF LAW**

24 3.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.  
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1 3.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
2 the charges upon which the action was initiated by proving by a preponderance of the credible  
3 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
4 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
5 Corrections, PAB No. D82-084 (1983).

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7 3.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
8 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
9 of Social & Health Services, PAB No. D86-119 (1987).

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11 3.4 Inefficiency is the utilization of time and resources in an unproductive manner, the  
12 ineffective use of time and resources, the wasteful use of time, energy, or materials, or the lack of  
13 effective operations as measured by a comparison of production with use of resources, using some  
14 objective criteria. Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal*  
15 *dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997).

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17 3.5 Insubordination is the refusal to comply with a lawful order or directive given by a superior  
18 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.  
19 Dep't of Social & Health Services, PAB No. D94-025 (1995).

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21 3.6 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
22 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant  
23 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's  
24 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

1 3.7 Willful violation of published employing agency or institution or Personnel Resources  
2 Board rules or regulations is established by facts showing the existence and publication of the rules  
3 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
4 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

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6 3.8 Respondent has met its burden of proving by a preponderance of the credible evidence that  
7 Appellant allowed the use of illegal substances on his state-owned residence, created a negative  
8 environment, allowed his dog to run unattended on his state owned residence, failed to follow  
9 supervisory directives and to follow established work hours and failed to adequately perform the  
10 duties of his position. Appellant's actions constituted neglect of duty, inefficiency, insubordination,  
11 gross misconduct and willful violation of agency policies.

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13 3.9 Although it is not appropriate to initiate discipline based on prior formal and informal  
14 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the  
15 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.  
16 D93-163 (1995).

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18 3.10 Management made extensive and repeated attempts to rehabilitate Appellant as an  
19 employee; however, Appellant continued to engage in misconduct and engaged in conduct that  
20 created a negative environment at the hatchery for other employees. Furthermore, Appellant  
21 condoned illegal activities on state premises by allowing the use of drugs created a substantial  
22 liability for the state. Respondent has proven, under the facts and circumstances, that Appellant  
23 immediate suspension followed by termination was warranted. Therefore, the appeal should be  
24 denied.

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**V. ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Jeff Wendt is denied.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

\_\_\_\_\_  
Walter T. Hubbard, Chair

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Busse Nutley, Vice Chair

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Gerald L. Morgen, Member